

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:

Schools and Libraries Universal Service)
Support Mechanism) CC Docket No. 02-6

**COMMENTS OF THE AMERICAN LIBRARY ASSOCIATION
IN RESPONSE TO PUBLIC NOTICE DA 11-331**

The American Library Association (ALA), the world's oldest and largest professional library association, is pleased to respond to this Public Notice seeking comment related to the Petition filed by Funds for Learning, Inc. to reject the Universal Service Administrative Company's Priority Two discount threshold recommendation for the Schools and Libraries Program for Funding Year 2010.

Thousands of public libraries have applied for and received discounts on basic telecommunications and information services, and thousands more have benefited from access to advanced telecommunications services through broadband capacities that have been made available to them through the program to the extent that applicants have the funding resources to pay the non-discounted portion. Libraries' use of E-rate discounts to provide patrons with desperately needed services are consistent with the fundamental purpose of the E-rate program—to provide access to advanced telecommunications and information services on a universal basis.

Libraries serve communities all across the nation. Each of these libraries plays a vital role in supporting job searches and career development, small business creation, homework and school research, access to online education, training, and access to government services and resources through its free public access terminals. Broadband connections are one of the critical elements that allow libraries to provide these essential services to the public. With the increased use of libraries comes the need for greater bandwidth.¹ Currently, libraries are facing a broadband crisis due to growing demand and increasingly bandwidth intensive applications. At the same time, many libraries are faced with practical challenges and/or budget limitations in providing the necessary higher bandwidth services to meet the growing needs of their patrons. We also remain concerned that the funding cap on the E-rate program—even with the adjustment for

¹ Almost 60% of libraries report that their connectivity speed is insufficient some or all of the time. It is significant to note that essentially the same percentage of libraries report inadequate bandwidth for their public access patrons even with the reported increases in bandwidth (44.5% of libraries report connection speeds greater than 1.5Mbps, compared to 25.7% in 2007-2008). See Bertot, J.C., et al. "Libraries Connect Communities 3: Public Library Funding & Technology Access Study." American Library Association. Chicago, IL. 2009. p. 23, 42.

inflation—will soon be reached thereby limiting the financial support schools and libraries will receive for fundamental telecommunications services and Internet access.

Predictability

Impact of Predictability on Applicants

The FCC in its June 13, 2002 *First Report and Order* (FCC 02-175), adopted a “framework for the treatment of funds collected for the schools and libraries support mechanism that have, through the normal operations of the program, not been disbursed.”

The Commission stated that *predictability* was the basis for developing this framework citing the statutory requirements in section 254 of “providing eligible schools and libraries with access to discounted telecommunications services and of ensuring that the universal service support mechanisms are specific and *predictable*.” The Commission went on to say that their action would “allow contributions to universal service to remain *predictable* for carriers and, ultimately, will inure to the benefit of their customers.” They also stated that the Commission was “committed to ensuring that eligible schools and libraries have access to sufficient universal service support consistent with the statute and therefore adopt a rule to ensure that unused schools and libraries funds are carried forward for disbursement in subsequent funding years.”

Following is the rule that the Commission adopted:

§54.507(a) Cap.

(a) *Amount of the annual cap.* The annual funding cap on federal universal service support for schools and libraries shall be \$2.25 billion per funding year. All funding authority for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in accordance with demand. All funds collected that are unused shall be applied to stabilize universal service contributions in accordance with the public interest and consistent with §54.709(b) for no more than three quarters, beginning with third quarter 2002. Beginning no later than second quarter 2003, all funds collected that are unused shall be carried forward into subsequent funding years for use in the schools and libraries support mechanism in accordance with the public interest and notwithstanding the annual cap.

(1) *Amount of unused funds.* The Administrator shall report to the Commission, on a quarterly basis, funding that is unused from prior years of the schools and libraries support mechanism.

(2) *Application of unused funds.* On an annual basis, in the second quarter of each calendar year, **all funds that are collected and that are unused from prior years shall be available for use in the next full funding year of the schools**

and libraries mechanism in accordance with the public interest and notwithstanding the annual cap, as described in paragraph (a) of this section [bold emphasis added.]

The rule that the Commission adopted, by calling for USAC to report unused funds quarterly and for those funds to be carried forward for disbursement in *subsequent funding years*, also provided for predictability of another kind. By causing the funds identified each quarter for use in the subsequent funding year, the FCC provides advance notice to applicants as to when those funds will be available for use thereby allowing them to make conscious decisions about the activities necessary to comply with E-rate procurement and application processes.

While we agree with Funds for Learning that it is difficult to know precisely how far down the discount matrix USAC will be available to fund in any given year based on that year's demand, at least we know that the amount available will be the amount of the cap (now adjusted for inflation) and the amount of funds that are available as of the second quarter preceding the funding year.

When the FCC decided on its own motion in July of 2009, to waive this rule both *after* the beginning of the funding year and *after* the funding window for 2010 had closed, that predictability was lost. If you happened to file an application for internal connections for Funding Year 2009, you got lucky given that the rollover funds were dropped into that funding year. If, however, you believed based on your best calculations that funding for your discount level would not be available and that it would not be worth the time and effort to go through the E-rate application process, you were disadvantaged when those funds were *not* carried into the subsequent funding year as the rule requires. While we understand that the FCC has the ability to waive any of its own rules, we ask that it adhere to the intent of the predictable cycle that is described in the rule.

The Rule vs. the Funds for Learning Petition

The petition filed by Funds for Learning suggests the following two options:

1. direct USAC to wait to fund the 80% FY 2010 requests until enough unused FY 2010 funds appear back on its books to cover them; or
2. direct USAC to fund those 80% requests right away by tapping into part of the \$400 million in unused funds from previous funding years.

Waiting

Suggesting that the SLD should wait to see if more funds are released in FY 2010 before determining a cutoff for the funding year is also not consistent with the rule. The rule contemplates that funds will be identified quarterly for the purpose of determining the amount of the rollover funds available as of the second quarter preceding the funding

year that will be available for use in the subsequent year. If there are currently funds available to fund at the 80% discount level, then the SLD should make those commitments. However, if there are not funds currently available to fund at the 80% level, waiting suggests that the FCC would need to waive its rule to use those funds in the current year and, as we explain above, doing so puts both the Priority One applicants and the neediest Priority Two applicants at risk for Funding Year 2011.

Using FY 2011 Rollover Funds to Fund FY 2010 Applicants at 80%

We appreciate the concern of Funds for Learning related to the lack of funding for all applicant requests in the Internal Connections and Basic Maintenance of Internal Connections categories of service. However, recognizing that there are not sufficient funds to cover all Priority Two services, whether the cutoff is at 81% or 80% is important only to those entities who are on the cusp of funding for the next lowest percentile. However, if sufficient funds are not available in FY 2011, the year in which the rule calls for the \$400 million dollars in rollover funds to be used, we run the risk of impacting all Priority One applicants. Since there is no rule in place addressing how Priority One requests would be treated absent sufficient funds to make commitments for all applicants requesting Priority One services, it is unclear what action the FCC would take to address this situation. We know that bandwidth requirements continue to grow and with those requirements come the need for additional Priority One funding. Funding Year 2011 may be the first year in which rollover funds are necessary to fund all Priority one funding requests.

While we appreciate the funding dilemma faced by all schools and libraries who may request funds for Priority Two services, we believe that telecommunications services and Internet access are categorized as the highest priority in terms of funding commitments for a reason. We continue to believe that these services remain the highest priority for limited funds. Taking away rollover funds from FY 2011 to fund Internal connections over yet unforeseen demand for Priority One services is not only contrary to the rule, it also sets the FCC up for having to create a new rule to address how to limit the funding of Priority One applicants in the likelihood that sufficient funds are not available.

Further, if there are sufficient funds, including rollover funds, to be able to fund all of Priority One requests, we know that there is a possibility that even those at the 90% discount level may not be funded in Funding Year 2011 if rollover funds are lost. Given that it is unlikely that the amount of rollover for Funding Year 2011 will match that of Funding Year 2010, we are concerned not only about having sufficient funds to fund all applicants for Priority One services but also the possibility that sufficient funds will not be available to fund the neediest applicants at the 90% discount level.

Our greater concern is that libraries are rarely able to meet the 90% threshold due to the way in which their discounts are calculated based on the student enrollment and participation of an entire school district—even when the boundaries of that school district far exceed the library's service area and a measure of poverty for the area they serve. That issue, however, is one of fundamental equity between schools and libraries in the

program and therefore we will not comment here on the impact of the 90% discount level on libraries in general.

Summary

Predictability is critical to the ability of schools and libraries to plan for their E-rate procurements and subsequent requests for funding. In the same way that the FCC stabilized which services would be eligible for E-rate support by only making annual changes to the Eligible Services List, the FCC needs to carry out its own rule to allow for predictability of when carryover funds can be used. Many large procurement activities can take up to several months to implement. Knowledge of what funds will be available in the Funding Year for which the procurement is taking place is key to having the lead time necessary to prepare procurements for the upcoming Funding Year where those funds will become available.

The only situation under which the FCC should waive its rule allowing for this predictability of rollover funds is if those funds are threatened in some way so as not to be available for the needs of schools and libraries.

Respectfully submitted,

A handwritten signature in black ink that reads "Emily Sheketoff". The signature is written in a cursive, slightly slanted style.

Emily Sheketoff
Executive Director
Washington Office
American Library Association